

**Gary Enterprises, Inc. and Jerry B. Whitaker. Case
9-CA-26846**

September 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On December 31, 1990, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Gary Enterprises, Inc., the Respondent, to make whole Jerry B. Whitaker, the Charging Party, for loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act. On March 27, 1992, the United States Court of Appeals for the Fourth Circuit issued a judgment enforcing in full the backpay provisions of the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on May 22, 1992, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated July 10, 1992, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business on July 17, 1992, a Motion for Summary Judgment would be sought. The Respondent filed no answer.

On August 14, 1992, the General Counsel filed a Motion to Transfer Proceedings to the Board and for Summary Judgment and Memorandum in Support. On August 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

¹ 300 NLRB No. 153.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(a) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee through May 31, 1992, is as stated in the compliance specification and we will order payment by the Respondent to the discriminatee.

ORDER

The National Labor Relations Board orders that the Respondent, Gary Enterprises, Inc., Gary, West Virginia, its officers, agents, successors, and assigns, shall make whole Jerry B. Whitaker by paying him the backpay amount listed below, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

	Net Backpay
Jerry B. Whitaker	\$27,569